

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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| DENNIS ZINN, | : | |
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| Plaintiff, | : | |
| | : | |
| v. | : | CIVIL ACTION NO. 3:04-CV-2025 |
| | : | (JUDGE KOSIK) |
| JO ANNE B. BARNHART, | : | |
| Commissioner of Social Security, | : | |
| | : | |
| | : | |
| Defendant. | : | |

MEMORANDUM AND ORDER

AND NOW, THIS 28th DAY OF APRIL, 2005, IT APPEARING TO THE
COURT THAT:

[1] On September 13, 2004, plaintiff filed the above-captioned action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking review of defendant's decision to deny plaintiff's claim for a period of disability, Social Security Disability Insurance Benefits and Supplemental Security Income;

[2] the matter was assigned to United States Magistrate Judge J. Andrew Smyser;

[3] by a Report and Recommendation dated April 14, 2005, the Magistrate Judge recommended that plaintiff's appeal be remanded to the Commissioner for further consideration of all of the relevant evidence consistent with his Report; and,

[4] the defendant filed a letter on April 25, 2005 stating that she waived the opportunity to respond to the Magistrate Judge's Report and Recommendation.

IT FURTHER APPEARING THAT:

[5] If no objections are filed to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of plaintiff's claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3rd Cir. 1987);

[6] having examined the Magistrate Judge's Report and Recommendation, we agree that the ALJ inadequately explained his rejection of probative diagnostic information from plaintiff's treating physician, the ALJ's assignment of greater weight to agency doctors' reports than to plaintiff's treating physician's report was inconsistent with controlling precedent, there is not substantial evidence to support a finding that the plaintiff's mental impairment has no more than a mild to moderate effect on his ability to function in a job setting, and that the ALJ's finding that plaintiff was not entirely credible was in error given that plaintiff's subjective complaints are supported by competent medical evidence. Thus we agree with the Magistrate Judge's conclusion that the matter should be remanded to the Commissioner for further consideration.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the Report and Recommendation of Magistrate Judge J. Andrew Smyser dated April 14, 2005 (Doc. 18) is **adopted**; and,

[2] the Clerk of Court is directed to **remand** the above-captioned action to the Commissioner for further proceedings consistent with the Report and Recommendation of the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge